



Welcome to Griddy!

Thank you for choosing Griddy Energy LLC (“Griddy”, Company” or “we” or “us”) as your Retail Electric Provider (“REP”). Your membership with us consists of several agreements: (1) this Terms of Service Agreement (“TOSA”), (2) Electricity Facts Label (“EFL”), (3) Prepaid Disclosure Statement (“PDS”), (4) Your Rights as a Customer document (“YRAC”), (5) End User License Agreement (“EULA”), (6) Privacy Policy (“Privacy Policy”), (7) Arbitration Policy, (8) Communications Policy, and (9) any written notices we provide you (collectively these agreements and policies make up your membership agreement with Griddy, the “Membership Agreement” or “Agreement”). You agree we have the right to make changes and amendments to the Agreement and the changes will take effect with at least 14 days written notice.

This Membership Agreement is available for your review at our website and on your app.

By using our website or clicking to accept the Agreement, you have agreed to be bound by the terms of the Agreement. You authorize us to obtain information we find necessary or helpful to provide you electric service, which may include, but is not limited to, your address, telephone number, account numbers, historical usage data, and other information. Most of the information we gather will come from you when you enroll with Griddy, but you also authorize Griddy to collect relevant information from your Local Utility, current REP, or other third parties. You additionally represent to us that you are either the account holder or that you are authorized by the account holder to sign up and accept this Agreement with Griddy on your or the account holder’s behalf.

### Contact Information

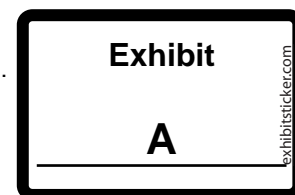
Griddy Customer Service Representatives are available to help you Monday through Friday from 8:00 a.m. to 7:00 p.m. Central Time.

Griddy Energy LLC	(800) 993-6207
REP Certificate No: 10243	Fax: (346) 998-1880
11811 North Freeway, #500	<a href="https://griddy.com">https:// griddy.com</a>
Houston, Texas 77060	<a href="mailto:support@griddy.com">support@griddy.com</a>

### Service Outage Reporting

In the event of a power outage, you can call Griddy at (800) 993-6207 and we will route you to your Local Utility. If it is after hours, you may call your Local Utility directly 24 hours a day, 7 days a week, at the following:

Local Utility	Outage Reporting	Service Requests
AEP Texas	(866) 223-8508	(877) 373-4858
CenterPoint Energy	(713) 207-2222	(800) 332-7143
Oncor Electric Delivery	(888) 313-4747	(888) 313-6862
Texas-New Mexico Power	(888) 866-7456	(888) 866-7456



## LET'S GET STARTED

### Who is Griddy?

Griddy is a retail electric provider, or "REP." We provide electric service to your home or business by purchasing power at the market rate and arranging delivery on transmission and distribution lines. We connect you directly to the wholesale price of electricity and bypass costly middlemen and brokers. Griddy's proprietary platform is delivered through our powerful and intuitive app that provides real-time market information and allows members to see their electricity consumption and expenditure.

### What is the Local Utility?

Your Local Utility charges for maintaining the transmission and distribution infrastructure. When you buy electricity from Griddy, we must arrange for electricity to be delivered to your home through your Local Utility. The Local Utility is also responsible for reading your meter and restoring power if there is an outage.

### What are my rights as a pay-as-you-go user?

Your rights as a pay-as-you-go user are summarized in your YRAC document. In addition, you should know that we will not deny service or require a prepayment or deposit for service based on a member's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of a member in an economically distressed geographic area, or qualification for low income or energy efficiency services. Also, we will never use your credit history, credit score, or utility payment data to set a price for your Agreement.

### What if I need a copy of my Agreement in Spanish?

#### ¿Qué hago si necesito una copia de mi Contrato en español?

Your TOSA, EFL, PDS and YRAC are available in Spanish on our website. Usted puede obtener los documentos de su Contrato (TOSA, EFL, PDS, y YRAC) en español en nuestro sitio web.

### What if I Have a Dispute or a Complaint?

If you have specific comments, questions, complaints, or billing inquiries, please contact us at:

Griddy Energy LLC  
11811 North Freeway, #500  
Houston, Texas 77060  
Phone: (800) 993-6207  
Fax: (346) 998-1880  
Email: support@griddy.com

If you are dissatisfied with our investigation/review, or if you would prefer to work with them directly, you can partake in the Public Utility Commission of Texas ("PUCT")'s informal complaint resolution process via the following contact method:

Public Utility Commission of Texas  
Customer Protection Division  
P.O. Box 13326, Austin, Texas 78711-3326  
Phone: (512) 936-7120 or in Texas (toll-free) 1-888-782-8477,  
Fax: (512) 936-7003  
Email: customer@puc.state.tx.us  
[www.puc.state.tx.us](http://www.puc.state.tx.us)  
TTY (512) 936-7136  
Relay Texas (toll-free) 1-800-735-2989

We want to resolve issues with you, however, if we can't or the PUCT can't, you agree that we will arbitrate the matter. Please click on this [link](#) for details on our *Arbitration Policy*

**As detailed in our *Arbitration Policy* you are agreeing to dispute resolution and binding arbitration. These terms affect your rights, including a waiver of class actions and jury trials. Please review these terms carefully as you are acknowledging and accepting them. You may also opt out of arbitration as detailed in our policy.**

### Where can I find the rules and statutes that are mentioned in this Terms of Service Agreement (“TOSA”)?

For more information on the rules mentioned in this TOSA, you can view a copy of the Public Utility Commission of Texas Substantive Rules here: <http://www.puc.state.tx.us/agency/rulesnlaws/subrules/electric/Electric.aspx>

### GRIDDY’S PAY-AS-YOU-GO PRODUCT DESCRIPTION

#### Am I eligible for pay-as-you-go service from Griddy?

You are eligible if:

- Your service location has a provisioned Advanced Metering Systems meter installed.
- You are not a Critical Care or Chronic Condition Residential Customer. Critical Care or Chronic Condition Residential Customers are not eligible for a pay-as-you-go service. This is to ensure essential energy services are not interrupted.
- You establish and maintain an active communication method, either an email address or mobile phone number, to receive important communications from Griddy regarding your account.
- *For business members only: Your POLR customer class is classified as small (< 50 kW peak demand) or medium commercial (50-1000 kW peak demand). We do not currently support large commercial meters.*

If after enrollment Griddy receives notification from your Local Utility that you do not have a provisioned Advanced Metering Systems meter installed or you are a Critical Care or Chronic Condition Customer, Griddy will notify you that you are ineligible to receive pay-as-you-go services. Moreover, if you become a Critical Care or Chronic Condition Customer after enrolling with Griddy, you will then be ineligible to continue receiving pay-as-you-go services. We will help you find another, non-pay-as-you-go alternative to Griddy. Some electric

assistance agencies may not provide assistance to members that use pay-as-you-go services.

#### What type of electricity plan do I have?

The PUCT requires classification of your electricity plan into one of three categories – indexed, fixed, or variable. Griddy only offers a pay-as-you-go indexed product with a Price Protection feature that allows you to lock in a set rate that varies on a quarterly basis. Griddy does not offer a fixed rate product and has no contracts or exit fees

#### How does the index product work?

The Griddy indexed product provides you with the wholesale price of electricity as published by the Electric Reliability Council of Texas (“ERCOT”). ERCOT’s wholesale price, called Locational Marginal Pricing (“LMP”), changes every 5 minutes, and settles every 15 minutes at the Real Time Settlement Point Price (“RTSPP”). The RTSPP is generally the average of the three (3) LMPs plus any “scarcity” adders known as ORDCs. This is how ERCOT bills the market for wholesale electricity. Because we pass the wholesale costs through to you, we bill you using the RTSPP for each 15-minute interval.

For more information about this formula, please refer to your EFL. Note: Since smart meters only report usage in 15-minute intervals, Griddy can only bill you according to the 15-minute RTSPP.

The price for indexed products may change without advance notice to reflect actual changes in Local Utility charges; changes to ERCOT’s or the Texas Reliability Entity’s administrative fees; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on Griddy that are beyond our control.

#### How does Griddy Price Protection work?

Griddy sets a Price Protection Rate every three months for each local utility and publishes this rate in an EFL prior to the start of the three-month period for which it is effective (“Variable Rate Term”). As a Griddy Member you can choose to lock in this rate at

any time and you agree to be billed this rate for all of your usage until the end of the applicable Variable Rate Term. After the Variable Rate Term for which you locked in your rate ends (and the next Variable Rate Term begins) your billing rate will be updated to the Price Protection Rate for the new Variable Rate Term, however, you will be eligible to return to the index rate at any time.

The Price Protection Rate may change in subsequent Variable Rate Terms at Griddy's sole discretion. Griddy sets this rate based on the company's expected and realized cost of wholesale power, ancillary services, Renewable Portfolio Standard costs, and transmission and distribution losses. Griddy will notify you on the effective date of any subsequent changes in the price. You can view the historical price charged for this product on our website at [www.griddy.com](http://www.griddy.com) or by calling (800) 993-6207.

The Price Protection Rate can change on the first day of each Variable Rate Term, so your bill may reflect two different energy charges depending on when you start service and your billing cycle.

The Price Protection Rate may change without advance notice to reflect actual changes in Local Utility charges; changes to ERCOT's or the Texas Reliability Entity's administrative fees; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on Griddy that are beyond our control.

### How does Griddy work?

Griddy membership connects you directly to the wholesale price of electricity. It is a pay-as-you go product that you can cancel at any time without penalty.

We can change non-price related provisions of your Agreement by providing you with notice. We will notify you at least 14 days before any change is applied to your account or otherwise takes effect. If you do not cancel your Agreement before the

effective date of the change, the change will become effective on the date stated in your notice.

## PRICING AND FEES

### How I do I find out what my index price is?

You can view the LMP price of electricity in real-time in the Griddy app at any time. You may also visit the following website [www.ercot.com](http://www.ercot.com) or phone number (800) 993-6207 to determine your current price. The price ranges from below 0.0¢/kWh to \$9/kWh, which is the market cap. Here is a breakdown of prices since the beginning of 2018:

- 50% of the 15-minute intervals have been below 2¢/kWh
- 90% of the 15-minute intervals have been below 4¢/kWh
- 95% of the 15-minute intervals have been below 6.6¢/kWh

Please note: The LMP price, in general, changes every 5 minutes, but can be updated within each 5-minute interval.

You can view the RTSP price on the usage graph and Statement Screen once we get your smart meter data.

You can also check out the EFL, which provides examples of the average price per kWh based on different monthly usage levels.

### What are Ancillary Services?

Ancillary Services include charges from ERCOT to support and maintain grid reliability, settlement reconciliations, and costs incurred to participate in the ERCOT Wholesale market. We also include any energy adjustments for transmission and distribution losses, unaccounted-for-energy ("UFE"), RTSP changes, and market related credit and transaction costs incurred by Griddy in this line item.

These charges are calculated on a simple per-kWh pro-rata basis for daily usage and show up on the

Statement Screen under the Wholesale Electricity tab.

If you are being billed the Price Protection Rate, these Ancillary Service charges are included in your Price Protection Rate and will not change for the Variable Rate Term.

### How I do I find out what my Price Protection Rate is?

You will be notified of the Price Protection Rate on the first day of each quarter to which it applies. You can also see the current rate at any time in the Price Protection page of your Griddy App.

You can also check out the EFL, which provides examples of the average price per kWh based on different monthly usage levels.

### Are there any recurring charges?

Griddy connects you directly to the wholesale price of electricity allowing you to buy at the same price as retail electric companies. Griddy members pay a monthly membership cost to receive access to the actual price of electricity generation with no added fees or mark-ups. There is one membership charge for residential members ("Residential Membership") and another for business members ("Business Membership"):

- Residential Membership: \$9.99 a month
- Business Membership is based on monthly usage (kWh):
  - 0 < 5,000: \$9.99 a month
  - 5,000 < 15,000: \$99 a month
  - 15,000 < 30,000: \$199 a month
  - 30,000 < 60,000: \$299 a month
  - 60,000 or more: Negotiated

We charge a merchant service (payment processing) fee that applies to each Payment Method transaction. It is not more than 2.5% + 25¢ per payment.

### What are the Local Utility TDU Delivery Charges?

This is what your Local Utility charges for maintaining the transmission and distribution infrastructure and metering of your electricity. These include, but are not limited to: monthly fees, usage charges, and demand charges. We pass these through to you with no mark up.

### What are the Local Utility's non-recurring fees?

These are fees you must pay that originate from your Local Utility and are passed through to you with no mark up. These fees usually result when you ask your Local Utility to perform a special service. Non-recurring fees by the Local Utility may include service connection, disconnection or reconnection fees, meter test fees, or special out-of-cycle meter read fees. These fees will appear as line items on your statement and are not included in the average price per kWh shown on your EFL. The specific price for each Local Utility fee will vary depending on the utility that serves your area.

### What taxes are included?

You will be responsible for any and all taxes that apply to your electricity supply. These taxes and fees will be included on a separate line item on your billing statement.

### What other non-recurring fees can I be charged?

None. Zip. Zilch. Griddy does not charge you any other non-recurring fees.

### Do I need to pay a deposit?

No. Griddy members are never required to pay a deposit. However, upon enrollment you will need to establish your account with a Connection Balance.

### CONNECTION BALANCE, CHARGES AND PAYMENTS, AND CURRENT BALANCE

### What is a Connection Balance?

A connection balance is the initial amount you prepay upon enrollment to establish pay-as-you-go service or to reconnect pay-as-you-go service with Griddy following a disconnection ("Connection



Balance”). The Connection Balance is set at \$49 when you enroll. If your Local Utility charges one or more service activation fees, the amount of such fees will be deducted from your account balance. Like all Local Utility charges, these fees are passed through at no additional cost. For more details regarding your Connection Balance, please consult your PDS.

#### **What is an Account Balance and how is it calculated?**

Your Account Balance is calculated based on the electricity consumed, the passed through Local Utility charges, the passed through taxes and fees, and your Griddy membership, all of which is debited from your account daily (“Account Balance”).

It is important to keep an Account Balance at or above \$10 or your service may be disconnected (“Disconnection Balance”).

#### **How do you determine my usage?**

We get your usage data from both Smart Meter Texas and ERCOT. Your usage may be estimated up to 5 days after the operating date. On the 5<sup>th</sup> business day, we finalize your usage for billing purposes. Any difference between the estimated usage and actual usage is credited or debited back to your account. This data is reflected on the Usage Screen and show up as the Electricity Usage line item on the Statement screen.

#### **How are billing corrections handled?**

Griddy reserves the right to correct any prior daily bills due to missing or erroneous customer charges that may arise as a result of: (1) meter errors; (2) miscalculations of taxes; (3) other errors and omissions. If any under-billed amount is not paid, and your balance is equal to or less than \$0.00, Griddy may request your TDSP to disconnect your electricity service.

#### **What payment methods are supported?**

Griddy supports the following payment methods (“Payment Methods”): Credit Cards, Debit Cards and

Prepaid Cards from the major card providers (American Express, Visa, Mastercard, Discover).

#### **How will my Payment Method be charged?**

Griddy only offers pay-as-you-go billing, which requires you to prepay your electric service by establishing a Connection Balance and maintaining an Account Balance of at least \$10. You will not receive a monthly bill or invoice. Your initial Connection Balance must cover any previous debt owed to Griddy and any applicable Local Utility fees to start service. In order to keep your electricity service flowing, your Account Balance must remain higher than the Disconnection Balance. If your Account Balance falls below the Disconnection Balance, your service may be disconnected or interrupted with little notice.

#### **When will my Payment Method be charged?**

Your account will automatically be recharged when your Account Balance reaches \$25 or less (“Recharge Amount”).

To minimize the number of charges to your Payment Method, we recommend you adjust your Recharge Amount to equal your average monthly spend. You can do this at any time in the app.

If your primary Payment Method fails, we will immediately run any secondary Payment Methods on file to avoid any interruptions to your account.

#### **Do you provide payment assistance options?**

Yes, you will be eligible to establish a deferred payment plan if your Account Balance reflects a deficit of \$50 or more AND there is an extreme weather emergency (as defined by PUCT Substantive Rule 25.483(j)(1)) OR the governor declares a state of disaster in the area covered by the declaration and the PUCT has directed that deferred payment plans be offered. You will also be eligible for a deferred payment plan if your Account Balance reflects a deficit of \$50 or more resulting from Griddy under charging you.

Your deferred payment plan document will have the specific details of your plan. If you enter into a deferred payment plan, Griddy may apply a switch-hold until your deferred payment plan is paid in full. A switch-hold means you will not be able to buy electricity from another REP while you are still in a payment plan with Griddy.

## TERMINATION

### How do I terminate my Agreement?

Just contact us and you can terminate your Agreement at any time, without penalty.

- Phone: (800) 993-6207 (toll free)
- Email: [support@griddy.com](mailto:support@griddy.com)
- Website: <https://griddy.com>
- Fax: (346) 998-1880
- Mail: 1811 North Freeway, #500, Houston, Texas 77060

### Can Griddy terminate my Agreement?

Yes, we may terminate your Agreement in our sole and absolute discretion. We will also close your account if your account remains interrupted or disconnected for more than five (5) consecutive business days. In this event, you may contact another REP to establish your electric service.

### If my Agreement is terminated, will I still have to pay you?

Yes, you will be responsible for any outstanding amounts. If either you or Griddy terminates the Agreement, all amounts owed by you to Griddy shall become immediately due and payable. Your obligations to Griddy will continue until you have paid all amounts due. If you do not pay the amount due or make acceptable payment arrangements, we may use debt collection agencies, small claims court, or other remedies allowed by law to collect the amount owed, including reasonable fees and expenses (including attorney fees) that we incur in the collection process. By providing telephone numbers to Griddy, you are expressly consenting to being contacted on those numbers for any purpose related to your account, including debt-collection, by a live person or automated service. See our Communications Policy for details.

### What happens if I have a positive balance and my Agreement is terminated?

If you elect to enroll for service with another REP, you will be entitled to receive a refund of any remaining funds in your Account Balance following deductions of any outstanding amounts owed to Griddy including deferred balances and applicable fees. Griddy will automatically refund the Payment Methods(s) on file that had the last successful transaction(s) for any remaining balance over \$5.00. For balances below \$5.00, you will need to contact Griddy to request a refund. You will receive any refund due within ten (10) business days after Griddy receives final usage data from your Local Utility.

Your payment method may continue to be charged after you terminate service if your account balance drops below \$25 before we receive your final settlement data from ERCOT or your Local Utility.

## DISCONNECTION AND RECONNECTION

### Under what circumstances can you interrupt or disconnect my service?

Continuation of electric service depends on your prepaying for services on a timely basis and if your current balance falls below the Disconnection Balance of \$10 your service may be disconnected with little notice. We will send a low account balance warning to you at least one (1) day but not more than seven (7) days before your Account Balance is estimated to fall below the Disconnection Balance. If you still fail to act, we can disconnect your service for non-payment.

We will not interrupt or disconnect your electric service on weekend days, during any periods in which the mechanisms for payment specified to you in your PDS are unavailable or our call center is not operating, or during an extreme weather emergency, as defined in PUCT Substantive Rule 25.483(j)(1). <https://www.puc.texas.gov/agency/rulesnlaws/subrules/electric/25.483/25.483.pdf>

We may request immediate interruption or disconnection of your electric service without prior notice under specific situations, including the existence of a dangerous condition at your service address or evidence of theft of service.

### **How do I reconnect my pay-as-you-go service?**

To reestablish service, you must bring your Account Balance to a level at or above the Connection Balance, which will require you to pay off any negative balance including all applicable Local Utility fees.

### **Do I still have to pay if my service is disconnected?**

Yes. If your service is disconnected and your Account Balance is negative at that time, you will be required to pay us any past due amounts, as well as any required Local Utility fees.

### **What if I have a medical condition that requires my service to remain connected?**

Per state regulations, Griddy cannot provide pay-as-you-go electric service to applicants who meet the utility criteria of a Critical Care or Chronic Condition Residential Customer. If after enrollment Griddy receives notification from your Local Utility that you have been designated a Critical Care or Chronic Condition Residential Customer, we will work with you to transition you to another REP in a manner that seeks to avoid a service disruption.

If we are unable to reach you or you do not respond to our attempts, we may transfer you to another REP. Qualification as a Critical Care or Chronic Condition Residential Customer by the Local Utility does not relieve you of your obligation to pay us or the Local Utility for services rendered.

## **COMMUNICATIONS**

### **How will you communicate with me?**

To use Griddy's services, you are required to provide and maintain a valid email address and mobile phone number. We may communicate with you via email, phone, text message or app push notifications to relay important account information,

such as payment confirmation, impending Recharge Amounts, payment failure, and disconnection warnings.

By using Griddy's website, services or products or contacting us, you agree to our Communications Policy. You consent to receive autodialed and/or pre-recorded telemarketing calls from or on behalf of Griddy and its affiliates or agents at the telephone number provided to Griddy, including your wireless number; however, this telemarketing consent is not a condition of purchase and can be revoked.

You are responsible for updating your contact information with us. Please review our detailed Communications Policy.

### **What happens if I don't receive your email or text message?**

Griddy's pay-as-you-go service requires that you establish and maintain an active preferred communication method so that we may send you important or required communications regarding your pay-as-you-go service. While we will make every effort to keep you informed, Griddy has no obligation to resend any account communication to you, whether required or optional, if your message could not be delivered to you as a result of your failure to establish, maintain or update your email account or phone number. Your failure to maintain or update the email address or phone number associated with your account could result in missing important account notices and the disconnection of your electric service.

## **YOUR RIGHT OF RESCISSION**

After you have enrolled with Griddy, you have the right to rescind your Agreement without fees or penalties of any kind by contacting us before midnight of the 3<sup>rd</sup> federal business day after the date you first receive this Agreement.

You may rescind this switch by contacting us by:

- Phone: (800) 993-6207 (toll free)
- Email: [support@griddy.com](mailto:support@griddy.com)
- Website: <https://griddy.com>
- Fax: (346) 998-1880



- Mail: 1811 North Freeway, #500, Houston, Texas 77060

Please provide your name, address, phone number, account number, and a statement that you are rescinding your Agreement under the 3<sup>rd</sup> day right of rescission.

#### SERVICE INTERRUPTIONS; NO REFUND OR REBATE

Company's services may be suspended temporarily, without notice, for security reasons, systems failure, maintenance and repair, or other circumstances. You agree that you will not be entitled to any refund or rebate for such suspensions and you agree not to seek monetary or other remedies from Company for such service interruptions or suspensions. Company does not offer any specific uptime guarantee for the services.

#### FORCE MAJEURE

Griddy will make commercially reasonable efforts to supply electricity but does not guarantee a continuous supply of electricity. Customer acknowledges that certain causes and events outside of Griddy's control (Force Majeure events) may result in disconnections in service and Griddy shall not be liable for any such disconnections. Griddy does not generate electricity, nor does it transmit or distribute electricity. Therefore, Customer agrees that Griddy shall not be liable for damages caused by electricity, TDU, Force Majeure events, including acts of God, acts of any governmental authority, acts of terrorists or enemies of the state, accidents, strikes or lock outs, labor troubles, required maintenance work, inability to access the TDU system, non-performance by the TDU, or any cause beyond Griddy's control.

#### ASSIGNMENT

You may not assign this Agreement to any other person without the express prior written consent of Griddy or its successor in interest, as applicable. An assignment made by you without such required consent by Griddy will have no effect. The Membership Agreement may be assigned by Griddy

without restriction (and without notice unless required by law). Consent is not required from you for Griddy to assign or pledge (whether absolute, collateral, or any other assignment or pledge), nor for any grant of a security interest in, or right to payment under this Agreement, and shall be binding on you and your successors.

#### WARRANTIES

**GRIDDY MAKES NO REPRESENTATION OR WARRANTIES, EITHER EXPRESSED OR IMPLIED, WITH REGARD TO THE PROVISION OF ELECTRIC SERVICE AND DISCLAIMS ANY AND ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BY NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

#### LIMITATION OF LIABILITY

You will be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of the electric power after receipt at the delivery point or points. **GRIDDY WILL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES (INCLUDING LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES), WHETHER BY STATUTE, IN CONTRACT OR TORT, EVEN IF THE RESULT OF NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, ACTIVE OR PASSIVE). ALL OTHER LIABILITY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES, AND SUCH DIRECT ACTUAL DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY. CUSTOMER HEREBY WAIVES ALL OTHER REMEDIES AT LAW OR IN EQUITY. THERE ARE NO THIRD-PARTY BENEFICIARIES TO THIS AGREEMENT. THE LIMITATION OF LIABILITY FOR ALL DAMAGES HEREUNDER IS ONE HUNDRED DOLLARS (US\$100.00).** To the extent any damages required to be paid hereunder are liquidated, the parties acknowledge that the damages are not intended and shall not be construed

as a penalty, such damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient or impossible, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

#### GOVERNING LAW

This Agreement will be governed by, interpreted, construed and enforced in accordance with the laws of the State of Texas, without regard to principles of conflicts of laws.

#### CUSTOMER INFORMATION AUTHORIZATION

You authorize Company to obtain information from your utility and other energy providers, including, but not limited to, account name, account number, billing address, service address, telephone number, standard offer service type, historical and future electric usage, rate classification, meter readings, characteristics of electric service, and billing and payment information. You further authorize Company to release that information to third parties who need to use or be aware of such information in connection with your electric service under the Agreement, as well as to Company's affiliates and business partners for marketing purposes.

#### ENTIRE AGREEMENT

This Agreement, including an agreement for arbitration and class action waiver, along with the enrollment materials, welcome letter, disclosure documents, renewal notices and any and all other related documents, whether oral or written, constitute the entire agreement between you and Company relating to the subject matter hereof and supersede any other agreements, written or oral, between you and Company or any of its agents concerning the subject matter of the Agreement.

#### FORWARD CONTRACT AND UCC

You and Company acknowledge and agree that the transactions contemplated by this Agreement constitute "forward contracts" within the meaning of the United States Bankruptcy Code, and further acknowledge and agree that Company is a "forward contract merchant". Except as otherwise provided for in this this Amendment and the TOS, the provisions of the Uniform Commercial Code ("UCC") of Texas shall govern this Agreement and energy shall be deemed a "good" for purposes of the UCC.

#### NO WAIVER

Any failure by Company to enforce any term or condition of Customer's electric service or otherwise exercise any right it may have under this Agreement will not be deemed a waiver of any rights to thereafter enforce any or all of the terms or conditions of Customer's service or to exercise rights under this Agreement.

#### SEVERABILITY

Should any provision of this Agreement for any reason be declared invalid or unenforceable by final and applicable order by a court or any regulatory body having jurisdiction, such decisions shall not affect the validity of the remaining portions, and the remaining portions shall remain in effect as if this Agreement had been agreed to without the invalid portion. If any provision of this Agreement is declared invalid, the remainder of this Agreement will be construed so as to give effect to its original intent and effect as near as possible. h. Survival. All representations, warranties, indemnifications, dispute resolution and arbitration provisions and limitations of liability contained in this Agreement shall survive the termination of this Agreement, as well as any other obligations of the parties hereunder which, by its terms, would be expected to survive such termination or which relate to the period prior to termination (including legal conditions, payment, and Company rights and the rights of others).

#### ELECTRONIC SIGNATURES

The parties acknowledge and agree that this Agreement and all related agreements and documents related to the services may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

#### WRITTEN NOTICE

Written notice includes, but is not limited to, notice by electronic mail to a valid e-mail address provided by you. By entering into this Agreement, you authorize us to send written notices to you through electronic mail or other electronic means, as permitted by law. The decision to send written notices to you via electronic mail or other electronic means is at our sole discretion. If the e-mail address or phone number you provide to us at enrollment becomes invalid, you agree to timely provide us with an updated, valid e-mail address or phone number to which we will send written notices. You are solely responsible for providing us with a valid e-mail address and phone number.